

Neutral Citation Number: [2024] EWFC 256 (B)

CASE NO: ZC23C50327

IN THE CENTRAL FAMILY COURT

First Avenue House

42-49 High Holborn

London

Date: 20 September 2024

Before HER HONOUR JUDGE ROBERTSON

IN THE MATTER OF

The London Borough of Lewisham (applicant)

-v-

NP (First Respondent mother)

MC (Second Respondent father)

S1 and S2 (Third and Fourth Respondents, by their children's Guardian)

Jacqui Gilliatt of counsel appeared on behalf of the Applicant

Herbert Anyiam appeared on behalf of the First Respondent

The second respondent was not present or represented

Siobhan Kelly of counsel appeared on behalf of the Third and Fourth Respondents

JUDGMENT

20 SEPTEMBER 2024

WARNING: This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Parties and applications

1. The children at the centre of this case are S1, a boy, born in 2018 and so now 6, and S2, a girl, born in 2019 and now 5. The application is brought by the London Borough of Lewisham, who have been represented by Jacqui Gilliatt of counsel at this hearing. The mother is NP, and she has been represented by Herbert Anyiam of counsel. The father has received notice of proceedings but has made it plain by text and other means that he does not wish to have any involvement. He has played no part in this hearing. The children's Guardian has been represented by Siobhan Kelly of counsel.
2. The application is the Local Authority's application for a Care Order dated 28 July 2023. The other applications, which were for an Emergency Protection Order and an Interim Care Order, have fallen away or been dealt with already.

Background

3. The children were living with their mother when they came to the attention of social services as a result of an anonymous referral in September 2022 which reported hearing constant shouting, screaming and swearing at the children, including the f-word and the c-word, always in a woman's voice. The level of shouting was said to be very concerning. It was also said that there were loud sexual noises coming from the

flat and that there was the smell of weed. The children were made subject to child in need plans. Referrals were subsequently received from the school that the mother had either been seen or heard screaming and using derogatory language towards S1 when out in the community.

4. In February 2023 S1 was taken to Lewisham Hospital with a burn and fingertip bruising. The cause of the burn was thought to be consistent with his explanation of playing with his mother's hair straighteners when she had finished with them but they were still hot. The mother said the bruising had been caused by S2. The doctors said that was possible but unusual. The children were made subject to child protection plans.
5. In March 2023 S2 sustained bruises to her back and other places. The mother originally said this was caused by S2 slipping down the stairs and bashing into a cabinet on the wall but the child protection medical concluded they had been caused by rough and tumble play between the siblings. In her final statement the mother admits that two bruises on the middle of S2's lower back and bruise on her lower right arm were caused by her, the mother, during rough and tumble play. It is unclear whether this admission relates to the bruises sustained in March 2023.
6. In May 2023 an incident took place at Lewisham library, when staff reported to police that they heard the mother tell the children she was going to "smash your face in". The mother was observed hitting S2 in the face twice, and I have watched the CCTV footage of that incident. The library staff were sufficiently concerned that they called the police and the children were placed under police protection. They went to stay with their uncle, PP. The mother accepted a caution for assault in relation to this incident, but that did not prevent her from going to stay with the children and their uncle. She and the children transitioned back home over the next month.
7. The mother was in a relationship at that time with her then-partner, JR and there were concerns about domestic abuse. There were also concerns that the children were witnessing sexual behaviour, including sexual intercourse between the mother, and JR at that time. In July 2023 the Local Authority sourced alternative accommodation from the mother away from JR because they felt there was a threat of serious injury or

even the death of the mother at his hands. The move did not take place at that time because the offer was subsequently withdrawn. The same month the Local Authority commenced the PLO.

8. At the end of July the mother took S2 to hospital with serious bruising to her whole forehead, both sides of her neck and also bruising to her flank. I have seen a photographs of the bruising to one side of the face and it covers the whole of the forehead and side of the face. It is shocking.
9. In her first statement the mother said she was not present when it happened but her brother told her S2 had tripped on the balcony step. She says she initially told the hospital she was there when the injury happened, but when they pressed for details because the injury did not match the explanation, she had to admit she was not there when it happened. She says in her statement that she regrets lying, and also that she admitted to social service she had lied. In oral evidence the mother disputed her own account in the statement, saying that she did not lie to the hospital but they merely misunderstood her. That does not explain why she would say twice in her statement that she had lied and it appears that the mother must either have been untruthful in her account in her statement or in her account to the court.
10. In any event, when she got to the hospital the mother said S2 had tripped and fallen on a step between the living room and the balcony. The hospital concluded that they could not say how the injuries were sustained but said they were caused by substantial force and they were “extremely concerned about non-accidental injury”. The mother and her brother PP were both arrested for grievous bodily harm against S2 and the children were placed again into police protection. The mother was bailed to have no unsupervised contact with the children. The children were both placed in foster care and at the start of August 2023 the court made interim care orders to support the placements. The first foster carer quickly felt unable to cope with the children and gave notice. The children had to move, and they moved into the placement where they are now. They have, therefore, been with the same foster carers for over a year, and are now settled and stable, with contact offered regularly to the mother.

Assessments

11. Within proceedings Dr Tosin Bowen-Wright undertook a psychological assessment of the children and the mother, and concluded that the mother had not been able to keep the children safe in the past and was doubtful whether she would be able to do so in the future. Dr Nicola Cleghorn undertook a paediatric assessment of S2 and concluded that it was likely that some of the bruising was inflicted. Dr Rizwan Saleem conducted a psychiatric assessment of the mother and diagnosed her with complex PTSD arising from her own childhood traumas and said that that was a significant factor in her parenting difficulties. A parenting assessment of the mother was carried out by Rebecca Slater, an ISW. She did not recommend the return of the children to the mother.

Positions of the parties

12. The Local Authority seeks final care orders and their care plan is long term foster care with contact to the mother six times per year, potentially more depending on a review.

13. The mother seeks the return of the children to her care under a Supervision or Care Order, and if that is not possible seeks contact with them twice a week.

14. The father continues to play no part in proceedings.

15. The Guardian supports the Local Authority's case.

This hearing

16. On 24 April 2024 the Local Authority, having considered the police disclosure, the medical evidence and the welfare questions in the case, informed the court that it no longer sought findings of non-accidental injury against the mother or her brother. They have pleaded their threshold in relation to the bruising now in terms of neglect and failure to supervise. It has not, therefore, been necessary to conduct a separate fact-finding hearing. I have conducted this week a 5-day hearing to resolve the outstanding disputes in relation to threshold, and to make the welfare decisions for S1 and S2.

17. I have had the benefit of a bundle, a separate contact bundle and I have read the Guardian's final analysis and the mother's final statement which were both filed after the bundle was completed. I heard oral evidence from Dr Tosin Bowen-Wright, Rebecca Slater, the Social Worker, the mother and the Guardian and heard submissions from all parties. I am handing down this written judgment on day 5 of the hearing.
18. The mother attended each day of the hearing. Much of the evidence was difficult for her to hear, but she remained reasonably calm until the end of her own evidence. She did appear to be struggling at times, and I gave her permission to go in and out as she wanted to. Even so, she was not able to remain calm during the Guardian's evidence on day three, nor during the submissions of Counsel for the Local Authority on day four. I remind myself that she has a diagnosis of complex PTSD and that certain matters appear to be triggering for her. Certainly on both of those occasions she was not able to control her outbursts which were prolonged, shouted at what was clearly the top volume she could manage, and which included violent hitting of a table and the issuing of threats to the Guardian and personal abuse to counsel for the Local Authority. On the second occasion I had to call security. The mother had left the court room by the time they came, and I asked them to sit outside with her. She did not ask to come back in, but I made it clear that I would not let her back in for two reasons. The first was that it was not possible to conduct a court hearing with her uncontrolled shouting. Nobody else could make themselves heard whilst the outbursts were happening. And the second is that I considered it unfair and potentially abusive to allow the mother to sit and listen to matters which so clearly triggered profound trauma in her and caused such acute distress. Much of what she shouted was about her own time in the care system and what it had done to her. The process of the hearing appeared to me to be re-traumatising for her, and it was very obviously not good for her. I make no criticism of her for not being able to control her behaviour, but it is relevant to the welfare issues and so I record it. I record also that she remained represented throughout and her counsel took no issue with the way in which I dealt with the situation. I am now handing down a written judgment in advance of any hearing in court, so that the mother does not have to sit and listen to a judgment being read out. She can read it if she wishes, or if that is too triggering, her counsel

can summarise it for her. I hope, by this means, to alleviate the mother's distress as much as possible.

19. The law

20. The burden of proof is on the Local Authority who assert the threshold matters and who seek the orders. In each case the standard of proof is the simple balance of probabilities, not more, not less.
21. Before I can make any public law order I must first consider whether the Threshold for making such an order under s 31(2) of the Children Act 1989 is crossed.
22. In any decision that I make involving the upbringing of a child, their welfare must be my paramount consideration, and I must consider all the elements of the Children Act Welfare Checklist which is set out in section 1(3) of the Children Act 1989.
23. In considering whether to make a final care order I must undertake a global holistic assessment of all the realistic options as set out in *Re B-S (Children)* [2013] EWCA Civ 1146.
24. I must also consider Article 6 and Article 8 of the ECHR. Any order that I make must be necessary and proportionate, and I must not make any order unless I consider that doing so is better for the child than making no order at all.
25. I have also in mind the well-known passage from *Re L (Care: Threshold criteria)* [2007] 1 FLR 2050 at paragraph 50 which says

“society must be willing to tolerate very diverse standards of parenting, including the eccentric, the barely adequate and the inconsistent”.
26. That flows from an earlier judgment in the case of *Re KD (A Minor Ward) (Termination of Access)* [1988] 1 AC 806 2 FLR 139 which said this:

“The best person to bring up a child is the natural parent. It matters not whether the parent is wise or foolish, rich or poor, educated or illiterate, provided the child's moral and physical health are not in danger. Public authorities cannot improve on nature.”

I have all of these authorities in mind as I consider the issues in this case.

Threshold

27. The threshold was refined during the course of the hearing to make it shorter and more focussed. I deal in this part of the judgment with the elements of the final version of the threshold document which I consider are relevant to threshold. The remaining issues I either deal with in the welfare section, or consider unnecessary to resolve.

Verbal abuse and aggression

28. The first threshold allegation I am going to deal with is that the children have been subjected to verbal abuse and aggression by the mother. It is alleged that between September 2022 and February 2023 the mother shouted, screamed and swore at the children constantly and that the children were heard crying and screaming at the family home.
29. The mother accepts shouting at the children but not being verbally abusive. In oral evidence she accepted swearing in her verbal interactions with them but said she did not swear *at* them, and said that as a result it was not abusive. For example she accepted saying “I’ve fucking had enough” but not telling them to fuck off.
30. The evidence in support of the allegation comes from an anonymous call made to children’s services in September 2022 saying the children are constantly being shouted, screamed and sworn at (f-word and c-word) by mother on daily basis. The children can be heard crying and screaming. The level of shouting is very concerning and it is always a woman’s voice. I have seen the record of this call.
31. The next piece of evidence is from Lewisham Library, who called the police on 16 September 2022 when a member of staff said he heard the mother say “stop messing about or I will smash your face in” and to use swear words towards both children.
32. A further piece of relevant evidence comes from the contact notes, albeit that they date from May 2024 which is outside the period cited in this allegation. The record for

3 May 24 records the mother shouting at the children several times in contact very loudly and the contact session being terminated five minutes before the end of the visit as the mother became verbally aggressive and told S1 to get out of her face. The contact supervisor removed the children immediately and told the mother it was not a positive environment for the children.

33. Finally I must consider the evidence of the mother's presentation at this hearing. I have outlined above the instances where she was simply not able to control her responses. This is a situation where she knows she is under the microscope and she knows that her dysregulation is a worry for the court and stands in the way of the thing she wants, namely the return of her children. Even in this situation, where there was a pressing need for her to show that she could remain calm, she was not able to do it. It is clear that even now she is triggered very easily and when she is, her verbal abuse is frightening (even to adults), and her swearing is directed very much *at* those around her.

34. I accept that there has been no opportunity for the mother to challenge the evidence of the anonymous caller and the library worker and that limits the weight I can put on them. But the fact that the evidence comes from such diverse sources strengthens it, and the fact that I have seen the dysregulation with my own eyes strengthens it further. In my view, given the diversity of the source of the reports alongside the consistency of the allegations, and those being consistent with events at the library and in court, it is more likely than not that the initial report was true, and that **the mother was subjecting the children to verbal abuse and aggression between September 2022 and February 2023, and that in that period she shouted, swore and screamed at them frequently as reported by the anonymous caller. I therefore make that finding, and find also that the children were heard crying and screaming at the family home.**

Library incident

35. I have already touched on the library incident, but it appears as a separate item in the threshold document as allegation number two. The allegation is that on the third of May 2023, while visiting Lewisham library, in addition to shouting and swearing at

the children, the mother threatened S1 and S2 with physical violence. She threatened “If you don’t shut up or be quiet you’ll get your face smashed” and “If you don’t sit down I’m going to smash your face in” and “If you’re going to continue to behave this way, you’re going to get sorted out”. The mother accepts that she shouted at the children that day, but denies threatening to smash the children in the face. I have viewed the CCTV of the incident. There is no sound and it is not possible to lip read what anyone is saying. I have not seen the police evidence about this nor any direct record taken from the witness. Given the lack of any direct sworn statement on the issue and the lack of any witness appearing at this hearing it is my view that the burden of proof has not been discharged in relation to this allegation and **I decline to make this finding.**

36. The third threshold allegation also relates to the same incident in the library. The allegation is that on that occasion, the mother struck S2 in the face with her left hand and that the mother subsequently accepted a police caution for assault by beating in respect of this incident.
37. This allegation is accepted by the mother save that she calls it a flick of the fingers with no force behind it. I have watched the CCTV footage. I accept that it may have been the mother’s fingers rather than her hand, but the mother’s description of it as a flick with no force behind it minimises the incident. It is clear from the footage that the blow really hurt S2. She clutches her face and holds it for some considerable time. There are no histrionics from her or indications that she is attention-seeking, but she appears to be crying, and she is obviously hurt. She clutches her face for quite some time before following her mother out in a subdued way. It was no mere flick of the finger that caused such pain. I find that the mother has not really accepted this incident as it truly happened, but has instead minimised it. The finding I make is that **on 3 May 2024, whilst at Lewisham library, the mother struck S2 in the face with sufficient force to cause considerable pain and distress to her daughter. She subsequently accepted a police caution for assault by beating in relation to this incident.**

Burn to S1

38. The fourth threshold allegation I wish to deal with is that on 16 of February 2023, the mother failed to supervise S1 adequately and as a result he sustained a burn from the mother's hair straighteners. That allegation is accepted by the mother **and I make the finding as sought.**

Multiple bruises to S1

39. The fifth threshold allegation is that multiple bruises were observed on S1 which the mother blamed on rough play between the siblings. That allegation is accepted by the mother although she did not accept they happened because of neglect or a failure to supervise the children. She said in oral evidence that the children were very fast, and could cause each other injury in an instant. That did not seem to me to excuse the fact that S1 was, by the mother's own admission, sustaining multiple bruises from his sister whilst both children were in her care, and whilst therefore it was her job to keep them both safe. She did not keep him safe from bruising from his sister. I find that **the mother failed to protect S1 from multiple bruises from his sister from overly-rough play.**

Bruising to S2's back

40. The sixth threshold allegation is that on 28 March 2023, S2 had bruising on her lower back, as seen by the nursery staff. The mother at that stage said that she engaged with rough play with S2 and also that S1 had hit her with a toy. She later said that some of the bruises occurred when S2 fell down the stairs. The child protection medical said "These injuries have been sustained because of ongoing rough and tumble play between the siblings. This is indicative of neglect as there is a lack of adult supervision when children are rough-and-tumble playing and inflicting injuries to each other." In this regard the allegation is very similar to the previous allegation. It boils down to an allegation that **the mother either caused the bruises to S2's back in March 2023 by overly-rough play, or failed to protect her from falling down the stairs or from bruises from overly-rough play with her brother.** I make the finding in those terms based on the mother's own admissions and the fact that it was her role to protect her children from bruises such as these.

Overarching finding

41. It is said on behalf of the Local Authority that the children have suffered physical and emotional harm and neglect as a result of the above incidents. I agree **that the findings I have made amount to physical and emotional harm caused by the mother and I make that finding.** That is the seventh finding. I am less clear that the findings I have made amount to neglect and I make no finding as to that. _

Sexual harm

42. The eighth threshold allegation is that S1 has witnessed (either visually or audibly) the mother engaging in sexual intercourse with JR on at least one occasion. The mother denied to Dr Bowen-Wright in her interview with her that the children had witnessed sexualised behaviour, and sought to blame their sexualised behaviour on a Tik Tok animation of a gyrating frog. As late as 12 September 2024 when she signed her final statement she appeared still to be disputing that their sexualised behaviour was learnt at home, suggesting that they may have got it from television, Tik Tok, Facebook or elsewhere. However in her oral evidence the mother admitted that **both children had witnessed sexual activity between her and JR on at least one occasion and perhaps more. I therefore make that finding,** and it is linked very closely to the ninth allegation, which comes next.

43. The ninth allegation is that both children display highly sexualised language and sexualised behaviours, indicating exposure to sexual activities and language. The evidence for this comes from multiple sources. Dr Bowen-Wright records that in her meeting with the children they started using sexualised language almost immediately, using phrases such as “ouch, that hurts, oh baby, that’s nice baby”, saying that was what mummy says when her partner sticks his willy in mummy’s mooney. They also acted out sexual moves, saying things such “JR sticks his dick into mummy’s pussy”. They said they had seen that, and when they did their mother had said “go to your room, put some music on”. There is more in the same vein. Dr Bowen-Wright confirmed in oral evidence that the words in quotes were the words the children had used and she had heard them herself.

44. The foster carer also told Dr Bowen-Wright that she was concerned about the children’s sexualised behaviour and spoke of her shock at the language they used. She could not bring herself to repeat the language. She and her husband lead a

church, and she worried about the language the children would use when they went to church, particularly in Sunday school, and said that they had to keep a close eye on S1 and S2 for fear of what they may expose the other children to, and concern from other parents at the church. She said that once S1 had said to S2 “I am playing with my willy, you can touch your pussy”. Often such comments were followed by a lot of giggling and screaming.

45. The Guardian in his evidence also said he had heard the children make such comments. He records that when he saw them they kept saying “bad bummer” and pointing to their bums, and that they said “JR sucks mummy’s mooney” then pointing to their genitals. S1 talked a lot about “sucking willies” and both children would then mime fellatio. They kept saying “oh yeah” in a sexualised manner, and S2 would gyrate on her chair mimicking someone having sex.
46. The mother does not challenge that the children have said these things. I accept that they did say them. That being so, it is my view that the evidence speaks for itself. The children themselves are naming JR and the mother as the source of their sexual knowledge. The allegation is that **the children display highly sexualised language and behaviours. I make that finding. I make a further finding**, which I find to be made out on the face of the unchallenged evidence, which is **that they display this behaviour and use this language as a result of witnessing their mother’s sexual activity whilst they were in her care, that witnessing that activity as they did on more than one occasion has caused them sexual harm, and that the mother has failed to protect them from that sexual harm.**

Drugs

47. The tenth allegation is that the mother has a history of misusing drugs, which places S1 and S2 at risk of physical and emotional harm and neglect, and of the mother not being emotionally available to them when under the influence of substances. The Local Authority rely on the mother’s hair strand test results which were positive for high level use of cannabis and cocaine in the period from to end of April 2023 and end of October 2023.

48. The mother accepts that that is what the hair strand test says, but says it does not accord with reality. She accepts she was using cannabis regularly at that time, at a level of 4-5 joints per night at its highest and at a reduced rate now. However she only admits using cocaine on one occasion, which was four days after her children were removed. In oral evidence she said she took a very high amount that day because she wanted to end her life. She does not accept using cocaine regularly or at all when the children were in her care. She says she has been asking to do another drug test ever since but has not been given the opportunity.

49. The mother's evidence was vehemently given and seemed heartfelt. However despite that, I can not see that I have been given any reason to doubt the scientific testing which is well established and is very clear. The results were at the high level so there is not a great deal of room for doubt. On the balance of probabilities it seems to me more likely than not that the scientific test is correct. I therefore **make the finding that the mother used both cannabis and cocaine from the end of April 2023 to the end of October 2023.** Given the mother's admission that at times she was smoking 4-5 joints a night, **I accept that her drug use placed S1 and S2 at risk of physical and emotional harm and neglect, and the mother not being emotionally available to them when under the influences of substances.** I do not make a finding that they were in fact harmed by her drug use, only that they were at risk of it, which seems to me an unavoidable finding in view of the level of drug use she has admitted.

50. A final allegation in relation to drug use is that the mother has been dishonest with professionals in her self-reporting about the extent of her drug use. She told Dr Saleem (psychiatrist) that she smoked cannabis but not daily, and that she had tried cocaine in the past. In contrast she told Ms Slater (ISW) that she did smoke cannabis daily but rarely smoked when she had the children, and that she used cocaine as a "one off" on a night out after the children were removed from her care. Prior to this, in November 2022, the mother told the health visitor that she smoked cannabis and was a social drinker. In February 2023, the mother told the social worker undertaking s47 enquiries that she did not smoke cannabis daily. She told this court that she did smoke it daily to this day, at least one joint a day and often more. These

things can not all be true. **I find that the mother has lied to professionals about the extent of her drug use.** Given my finding that she used cocaine for several months in 2023 it follows that I must also find that **in particular the mother lied about her use of cocaine, which was used regularly during the period of the test and was not a one off.** The Local Authority allege that **the mother's lack of honesty about the extent of her drug use has impeded appropriate risk assessment and safeguarding concerning the children and also restricted her capacity to engage in necessary substance misuse services.** It seems to me that those things must flow as a matter of logic from the findings I have made, and so I make those findings as sought and bring them together as finding number 11.

Domestic abuse

51. The 12th allegation is that **the mother's relationship with the children's father, MC, was abusive and the children were witness to domestic abuse.** The mother accepts this allegation, and accepts that in January 2023, MC assaulted the mother at home, and she sustained a bruised eye. MC has had the opportunity to participate in these proceedings to dispute the allegations but has chosen not to do that. There is therefore no evidence to the contrary. **I make that finding as sought.**
52. The 13th allegation is that the mother had a 7-month relationship with JR, which was abusive, and the children suffered emotional harm and physical harm due to witnessing domestic abuse. The mother accepts that allegation, and accepts that there were arguments in the home in which the mother and JR would scream and shout at each other in the children's presence. I am aware also that there is social work evidence showing that they were so concerned about JR's violence towards the mother that they thought she might be killed or seriously injured by him and that they thought the situation was very dangerous. They took steps to try to obtain a house move for the mother because of the threat. Having said all that, I have looked back through the orders made in this case and I can not see that JR has been given an opportunity to respond to the allegation that he was violent towards the mother. He is not, as far as I can tell, on notice that this finding might be made against him. Despite the large body of evidence in support of the allegation, I can not see that it

would be procedurally fair for me to make the finding sought, and for that reason I am not able to do so.

53. That concludes the disputed matters which I consider appropriate to put in a threshold document. Looking at them as a whole, I have no difficulty in finding that the circumstances with respect to the children are as set out in s31(2) of the CA 1989 and the threshold for making final orders is crossed.

Welfare checklist

54. I turn then to the welfare considerations. I have to decide whom the children should live with and what the legal framework supporting the placement should be. In making that decision their welfare is my paramount consideration and, as ever, the welfare checklist will assist me in thinking clearly about that.

Their age, sex, background, and any characteristics of theirs which the court considers relevant

55. I have already set out at some length their ages, sex, background and characteristics.

The ascertainable wishes and feelings of the children concerned (considered in the light of their age and understanding)

56. I begin then with the ascertainable wishes and feelings of the children. They are shortly put. S1 has said he would like to live with his mother. S2 has said she would like to stay with her current carers but would like to see her mother. There is no doubt that despite the findings I have made above there is a warm and loving relationship between the mother and the children. I take their expressed wishes and feelings at face value. There is however a limit to the weight I can give to them given the children's young ages and necessarily patchy understanding of the issues in the case.

Their physical, emotional and educational needs

57. Dr Bowen-Wright painted a vivid picture of S1 and S2 in her report. I have already set out what she says about their use of sexualised language and behaviour. In addition she found them active and challenging to settle. They found it difficult to sit still on their chairs and to concentrate. They laughed a lot, at times raucously in a manner that could be considered manic, falling on the floor and off their chairs. They

attempted to climb on the table, jumped on furniture and required frequent prompts to calm down and listen. She said they seemed ambivalent, but also compelled to share their experiences. In oral evidence she said that she felt very disturbed when she left the children. She said she'd been with them for only an hour and a half. If you were with them for a whole day it would be mentally exhausting. She described them as significantly emotionally dysregulated.

58. Dr Bowen-Wright said that in her view the children's emotional and psychological needs had not been met and they had subsequently developed dysfunctional emotional states and dysfunctional attachment styles.

59. According to Dr Bowen-Wright, because of the children's level of need they needed carers with experience of children who have had trauma. The carers would need a lot of support to maintain the emotional capacity to cope with these children. They needed to be mentally robust and with enough emotional and mental capacity to manage the level of need.

60. The Independent Social Worker Rebecca Slater agreed on the basis of Dr Bowen-Wright's assessment and also her own observations. She observed contact in January this year. She observed warmth and affection between the mother and the children but she was also very concerned about the dynamic. For example, she noted that there were times when the mother became angry, and said that when the mother looked irritated, S1 became very placatory. She said that indicated a pattern, suggesting that he had had to placate the mother, and perhaps protect S2. She said they were unusual behaviours. It was her view that the children were likely to have been frightened over a long period of time by their mother's behaviours. Because of these features of the children's experience it was her view that they now had a need for reparative care. The Guardian in oral evidence agreed and said that was key.

61. Dr Bowen-Wright was asked whether the children had an urgent need for therapy. She said they did have a need for therapy but the urgent need was an urgent need for a stable home and to feel safe. Therapy was unlikely to be helpful until that had been achieved. Once that was in place, it was her view that the children needed a referral to

the local CAMHS team for assessment for child psychotherapy. But the urgent need was for a stable home.

62. The children have historically not been able to engage well with education because of their dysregulated behaviour. The evidence from the school and nursery though is that since October they have begun to settle and are doing better. They have a need to be calm and stable enough to be able to engage in education. The progress that has been made needs to continue.
63. The children also have all the normal needs of young children – to have their basic care needs met, to have their cultural and identity needs met and to have a relationship with their family if it is safe to do so.

How capable the mother is of meeting their needs

64. Before considering the mother's ability to meet the children's needs it is necessary to understand a little of the mother's background. By her own account, her mother left the family home when she (the mother in this case) was two, and she was then brought up by her father. She says her father physically abused her, including kicking her down the stairs, headbutting her and not giving her anything to eat. She said she sometimes resorted to stealing food because she was so hungry. She would attend school in dirty clothing and with bruises, and as a result she was badly bullied both in primary and in secondary school. When she was 12, her father's friend allegedly sexually assaulted her. When she told her father he accused her of lying. She packed her bags and ran away to her mother's home. She lived there for a while, but her mother could not cope with her and sent her into foster care. At 14 she was in a secure unit for adolescents. By that stage she was self-harming and regularly running away. At 16 she was placed in an after-services children's home. She became involved with someone who had schizophrenia and who "messed with her head". During that time she says she was partying, drinking and raving. At 17 she was placed in a YMCA hostel. She says she was given no advice about claiming benefits and after five months was evicted for non-payment of rent. She became homeless and ended up on the streets. Her father was living in a homeless shelter at the time and he let her stay with him for a while. She managed to get herself a job and was able to have a home

and an income, and it was at this time that she met the father of S1 and S2. He seemed a “nice guy” and for a while she was doing well. However, as will be obvious from the threshold findings I have made she went on to suffer domestic abuse at the hands of the children’s father, and possibly also at the hands of her next partner JR, though I have not made findings about that. It is against this background that she has been diagnosed, perhaps unsurprisingly, with complex-PTSD. She is not to blame for her complex-PTSD, nor is she to blame for the way it makes her behave. She has had a traumatic and damaging childhood, and she deserves the sympathy of the court and the professionals who work with her. Life is not fair, and it has certainly not been fair to her.

65. That said, the focus of the court must now return to the children. Dr Bowen-Wright said it was clear from the reports of the children’s carers and the contact logs that the children have been significantly affected by their experiences of care while living with their mother, including exposure to violent and sexual behaviour. She said the contact logs also provided evidence of the mother’s limited capacity to cope with and remain sensitive to the children’s emotional and behavioural needs even during time-limited supervised contact. I have set out one such contact report above. Dr Bowen-Wright did not think the mother would be able to meet the children’s needs at present. She considered that the mother would need to have made significant progress in her own healing journey to be in a position to meet the children’s needs, and she doubted the mother’s ability to provide the necessary reparative parenting whilst working through her own emotional and mental health difficulties. She did not think that the work the mother needed to do would be done within the children’s timescales.
66. Likewise the ISW Rebecca Slater said that she did not believe that the work the mother needed to do to address her own support needs and those of the children could be completed whilst the children were in her care. She said the work needed for the mother was complex, and the children’s needs were high. “To return S1 and S2 to their mother’s care whilst this work is undertaken would in my view set up both mother and children to fail and likely cause further harm”, she said
67. Dr Saleem’s evidence was that the mother’s mental disorder of C-PTSD was undoubtedly a very significant factor in her current difficulties, including her

parenting difficulties. Dr Saleem said that the mother would need a minimum of 12-months of treatment for the C-PTSD, but also said it could be very difficult to treat, and the safest assumption would be that the mother's current presentation was likely to be maintained, with dramatic improvements in mental disorder being unlikely in the foreseeable future. She also said the symptoms may even worsen in the short term as the mother worked through the issues.

68. The Guardian was very clear in his oral evidence that he did not think the mother was capable of meeting the children's needs, either now or while she was working through her own difficulties. He spoke about his conversation with the mother earlier this month, when he said the mother had started very angry. He had been conciliatory, he said, and she had calmed down, but a five-year old can't do that. He referred to the first of her outbursts in court, which had happened a few moments before, saying that because of her own trauma she was not able to regulate her emotions, and saying that a five-year old cannot regulate a parent's emotions. He noted that the mother's outburst was unsettling for adults. He said "Listening to her outburst today, I wonder what it would be like for those children". He later said "I cannot envisage any scenario in which it would be safe for them to return".

69. It is the mother's case that she has now completed parenting programmes including the Being a Parent parenting course, the Keys to the Freedom Course and that she has started a counselling programme. She also says she has done a Non-Violent Resistance course which helped adults caring for young people presenting with violence, risk-taking or aggression. It is her case that she now has the skills to respond in the right way to the children.

70. I am not persuaded by the mother's argument. Firstly, no professional supports it. Secondly, it was very evident in court that whatever courses she has done they have not yet produced the required effect, which is to help her regulate her emotions. Her tirade against counsel for the Local Authority left that professional somewhat shaken and security had to be called. As the Guardian says, one must imagine what that would be like for the children. It appeared to me that this was a trauma response on the part of the mother, but whatever it was, it was something she could not control. Looking at the profile of the mother at present, it is abundantly clear that she does not

match the profile of the type of carer these children now need, namely a carer who is mentally robust and with the emotional and mental capacity to deal with their challenging, chaotic, energetic, boisterous and often transgressive behaviour. I come to the view that on this ground alone, the mother is not able to meet the children's needs at present, and that is before I have even considered her ongoing drug use and whether she is able to avoid domestically abusive relationships.

The likely effect on them of any change of circumstances and the harm which they have suffered or are at risk of suffering

71. In the event that the children were returned to their mother's care I am in no doubt that they would suffer further harm. I have made findings that they have been harmed in her care, and there is clear evidence that she has not been able to make the changes which would prevent further harm being done. The children would continue to experience her as unpredictable, sometimes warm and loving, sometimes frightening and abusive. The progress they have made at school would be likely to be undone. They would be likely to return to their previous state of finding it difficult to settle and to learn. There would be likely to be continued damage to the children's attachment patterns. It is almost unimaginable that social services would not have to step in very swiftly to remove the children from harm once more.

Placement options

72. I come then to the holistic assessment of the realistic placement options. Given what I have said about the likelihood of harm if the children are placed with the mother, placement with her only becomes a realistic option if her difficulties can be treated or parenting skills improved within the children's timescales or if there is a support package which could help her to meet any of the children's needs she can not meet herself.

73. In terms of therapy, I have already set out Dr Saleem's view that treatment is on average 12 months, but that the mother's current presentation is likely to be maintained in the foreseeable future. That evidence has not been challenged and I accept it. In terms of parenting skills, Rebecca Slater has made it clear that the mother needs to address her own difficulties before parenting support work could be

considered. She said she would need to show meaningful and sustained change from her therapy and in addressing substance misuse before parenting work could begin. She retained concerns about the mother's insight and capacity for change.

74. I agree that those are concerns. With one significant exception the mother did not show good insight into the issues in this case. She made concessions when they were about abuse from other people but made very few concessions as to her own role in the children's difficulties. The significant exception was this: that when she was asked whether the children were well-cared for by their current carers she said "Yes, I know they are. I can see it in how they speak and present themselves. The social worker sent me a video of them on S1's birthday. They are happy". When she was asked whether they were doing better now than they were before (i.e. when they were in her care) she answered "yes". It can not have been easy for her to give those answers, but to my mind they show two things. They show that she loves her children; that is why she can see it when they are happy, even when she is in emotional pain herself. And it shows the beginning of true insight, that the children are at present better without her. I give her enormous credit for that, and it provides hope for the future. In the meantime, her overall levels of insight appear to me to be low, and that is not surprising given that the necessary therapy for her own trauma has not properly commenced. So again, she is not to blame, but her lack of insight does make it all the more unlikely that she will understand what needs to change, and be able to change it within the children's timescales. Those timescales are very short. The evidence is that their need for stability is urgent. It is now.

75. As for parenting work, she has already completed some, and I give her credit for that. She has done her best to do what was needed to get the children back. She has tried hard. However I agree with the ISW Rebecca Slater that parenting work can not be successful until progress has been made through therapy. The issues which prevent return currently are primarily emotional regulation issues, and they will not be addressed in parenting classes. Any advances that are made in parenting classes will be undermined by continuing emotional dysregulation.

76. And so I come to the view that therapy and parenting work will not change things quickly enough to enable the children to return to their mother at this stage. I have

also considered whether there is any support package that could be put in place to allow them to return, bearing in mind the mother's proposal that there be a care order or a supervision order. It was the Guardian's evidence that there was "not in the slightest" any such package that could protect the children in her care. That seems to me to be right, given the nature of the risk is of harm arising from random outbursts. Support workers could not be there 24 hours a day to protect the children from them, and even if they were, the experience in the court shows that the presence of other adults does not prevent the dysregulation from mounting, bursting out and obliterating everything else. The presence of other adults would not protect the children from this. Nor have I seen any evidence that it is possible to predict when a trigger will come, and when the mother will become angry and frightening. It could happen at any time, and so there is no programme of support which could reduce the risk by, for example, taking the children into respite care at certain time. I sadly come to the conclusion that there is nothing that can be put in place at this stage to make the children's placement with their mother safe.

77. There are of course positives about placement with the mother. The children love her, S1 at least says he wants to go home, they would be in a placement which met their cultural and identity needs, and I have in mind that the best person to bring up a child is the natural parent provided the child's moral or physical health is not in danger. Moral health is perhaps now an outmoded concept, but in this case, it seems to me that the children's emotional and physical health would be in danger. In my view the risks of this placement far outweigh the advantages.

78. I have considered whether adoption might be a realistic option. There are obvious advantages. It brings permanency and stability, it allows the children to be claimed by a new family and to have a sense of belonging to that family, it removes the requirement for statutory intervention in the form of LAC medicals, social work visits and the Local Authority having to consent to things like school trips and sleepovers. There would, presumably, be some degree of ethnic and cultural matching. However in this case there are significant drawbacks to adoption. There are all the usual worries, such as the fact that the children may question their own identities as they get older, particularly in their teenage years, and being an adopted person can be unsettling for a young person. But in this case there are further difficulties. Firstly, the

children are 5 and 6 with a clear sense of their family and love for their mother. It would be very hard for them to transfer their sense of identity to another family – indeed it may not be possible. Then there is the issue of the children’s sexualised and otherwise challenging behaviour. With such a profile, they would be very difficult to place. And then there is the risk of placement breakdown. I remind myself that the first foster carer simply could not cope with the behaviour of these children and that placement broke down. I refer back to Dr Bowen-Wright saying she felt exhausted after an hour and a half with them, and how difficult it would be to be with them all the time. It will clearly take an exceptional carer to achieve that. An adoptive placement might never be found for these children, and even if it were, their behaviour and the challenges they present imply a significant risk of placement breakdown. In oral evidence the social worker told me this had been seriously considered by the IRO and others in a succession of meetings. In the end, no professional thought that adoption was right for these children. In my view, the disadvantages do outweigh the advantages, and I can see why the professionals opted for long term foster care.

79. Turning then to that option, the advantages are that the children are already beginning to settle and thrive in their current foster placement. S2 has said it is where she would like to remain and so it accords with her wishes and feelings. Their current foster carers have said they are committed to looking after these children until they are 18, and they have already weathered the storm of the first year, beginning when the children were perhaps at their most profoundly unsettled and difficult to manage. They have got through that, and are now seeing results with both children engaging better at school and being more settled generally. If the children remain in long term foster care they will be safe, and they will receive the attuned care they need. The current carers did not at the start have experience of dealing with children who had experienced trauma, but they do now. They are being supported by Dr Peart, a psychologist, to help them tailor their responses to the children’s behaviours, and Dr Peart has told the Guardian that they have been engaging well. There is, then, a certain stability and security in this current placement which might be very hard to replicate elsewhere. The current carers, as church leaders, appear to have the widespread family and friends support network which Dr Bowen-Wright and others thought was essential in order to give them respite, help and emotional support. They

appear to have the robust mental health and emotional stability to be able to cope with the behaviour of these children. A further advantage of long term foster care is that these carers have been approved, and the children could stay with them. They would not have to undergo a further move. Finally long term foster care will give them the opportunity to have contact with their mother regularly, to maintain that relationship and, if the mother does the necessary therapy and starts to get better, there is no reason why that could not be increased in the future. As the social worker said in her oral evidence, there could even be opportunities in the future for the mother to have the children back in her care. Although there is much to do before that could be considered, long term foster care leaves the door open to family reunification in the longer term.

80. There are of course disadvantages to long term foster care. These children are still young, and will face 12 or 13 years in the care system if I make Care Orders. During all that time they would be subject to LAC medicals and reviews, they would have a social worker visiting them which children, especially teenagers, find embarrassing and irritating. There is the social stigma of being a child in care. There is the possibility that the current placement, strong and stable though it is at present, could break down. If that happened the children would find themselves in a system which does not promise stability. There are many examples of children going from placement to placement and if that happened to these children, it would be significantly to their detriment. The current placement is not ethnically matched. The children are white, their carers are black, so it is immediately obvious to observers that the children are not the biological children of the family. That could give rise to intrusive questions, and increases the risk of social stigma. Staying in foster care is not what S1 wants. It does not accord with his wishes and feelings.

81. It does not appear to me that there are any other realistic options. There are no family members who are willing to have the children, the father in particular wanting no part of raising his children. I do not have an explanation for that, and it is sad, but it is the fact. There is no indication that residential care should be considered in this case, or that it would be beneficial to the children.

Decision

82. It is immediately obvious to me that there is only one option which will keep the children safe and that is long term foster care. There is therefore no choice as to the form of the orders I must make, and I therefore make orders for both children to be placed in the care of the Local Authority. I do so in the knowledge that there is a risk that the current carers will not feel able to keep the children in the long term. Whilst the impact of that, if it came to pass, would be severe, the chances of it coming to pass are in my assessment relatively low. I asked specific questions of the social worker about that, and was reassured that these carers really are committed, and to them it is part of their Christian faith to look after these children. I also make this order in the light of my view that it is, in the end, the only realistic option. I have set out all the advantages and disadvantages of placement with the mother, but when I weigh them in the balance, it is clear she can not at present keep the children emotionally or possibly physically safe, and she is not currently a realistic option. Long Term Foster Care is therefore the only realistic option left. In those circumstances, I am grateful that the children are in such a positive placement, and appear to have found the exceptional carers who can provide them with what they need. I am satisfied that the orders I am making are necessary and proportionate to the risk to these children.

Contact

83. The care plan is for the children to have contact with their mother six times per year. In oral evidence the social worker said this could be increased to take into account the children's birthdays and the mother's birthday. The mother would wish the contact to be far more frequent, asking for twice per week. In considering this I must look at the contact record. Much of the contact has been warm and affectionate, and there is love and a clear bond between the mother and the children. It is important for the children that that is nurtured by the contact arrangements. However I have already set out an example of a contact which was not positive for the children, and other contact notes also record the mother raising her voice and being angry. In addition, there are very many contacts recently which the mother has missed. Contact has been scheduled twice per week. Since April, even allowing for contacts which the foster carer cancelled or in relation to which there was confusion about an appointment, the mother cancelled about half of all contacts. It appears that she would let the contact centre know in the morning of the contact so the children were not brought to contact

and left wondering what was happening. Nevertheless, that is a high level of missed contacts.

84. In oral evidence the mother explained that she found contact emotionally challenging. She said she was emotional about not being with her children, and she would sometimes be crying. Staff told her not to cry in front of the children. She said she was forced to hold back tears in front of the children and not say certain things. It affected her mental health. She said it was horrible that she had to say goodbye to them at the end of contact. She said that from the end of this week (the week of this hearing) she would probably never see them again so she questioned what the point was of going to contact. She asked what sort of a relationship she would have if contact was four times a year. She said the Local Authority were breaking her with this sort of contact plan. She said she had done all she could in terms of parenting courses and counselling to get the children back but she was knocked back every time. "I'm so mentally broken", she said. She said she used to be a happy mummy, playing and getting on a bouncy castle with them. That is how they think of her. She said that she could not see herself going to contact and letting the children see her so mentally broken. She wanted them to remember her as a happy mummy.
85. All of this I understand. I do not blame the mother for not going to contact when she felt like that, although it might perhaps have been better to discuss it with the social worker and develop a more realistic contact schedule. Nevertheless, I must ask myself what the mother's mental state is likely to be at contact now that I have made Care Orders. I know she is expecting the orders to be made, but that will not make it any easier for her to cope with them. She is likely to be, if anything, even more "mentally broken" (to use her phrase) as she comes to terms with the loss. It can not be right, in those circumstances, to put both her and the children through a twice weekly or even weekly torment of holding back tears and what in all likelihood would be repeated cancellations. With this in mind, I consider the Local Authority's proposal for six times per year is about right. As ever, it is only a starting point. Reviews will be essential. As the mother works through her issues, it is to be hoped that contact will be able to be increased. As I have already said, an eventual return of the children to their mother is not ruled out, although I do not want to give false hope about that. It would require all the therapy Dr Saleem recommended, and for that therapy to bear fruit in

terms of the mother demonstrating consistently controlled emotions. In order to give everyone the best chance of contact increasing, it is important to keep it at a level which allows the children to settle and feel secure, and which allows the mother time away from thinking about contact in order for her to think about her own needs. Six times a year seems about right for that. I do not have a strong view as to whether birthdays should be added: that could perhaps be the subject of a review after the first few contacts.

Disclosure

86. I direct that Dr Bowen-Wright's report should be disclosed to Dr Peart. I agree with the Guardian that it would help Dr Peart to understand what the children have been through which in turn will help him guide and teach the foster carers as to the appropriate responses to the children's behaviours, for example their use of sexualised language. I would ask the advocates to consider whether any other documents should be disclosed to him or to the foster carers to assist them in understanding the children's needs.

Post script

87. The mother has asked for the Local Authority to set out a route map of what she needs to do to work towards the return of her children. They have said they will do that. In my view this is a mother who needs help, and needs to be shown how she can get the therapy she so desperately needs. I have not yet seen the Local Authority's route map. I will scrutinise it when I do see it to ensure it gives the mother a clear and realistic way forward. Once I am satisfied with that document, I will direct that it be appended either to the Care Plan or to this Order.